REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO (OS) NO. 268 OF 2006**

% **Date of Decision** : 20th December, 2007.

BHAGWAN KRISHAN GUPTA .... Appellant.

Through, Mr. Arun Khosla, Advocate.

VERSUS

PRABHA GUPTA & ORS. .... Respondents.

Through Mr. Y.D. Nagar, Advocate for the respondents 4 & 5.

Mr. M.L. Mahajan & Mr. Gaurav Mahajan, Advocates for the respondents 7-8.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The appellant herein is son of late Mr. Murari Lal Gupta, who expired in the year 1986. The respondents in the present appeal are his brothers and sisters i.e. other children of late Mr. Murari Lal Gupta and children of late Mr. Girdhari Lal Gupta. Mr. Girdhari Lal

Gupta was brother of late Mr. Murari Lal Gupta, who expired in the year 1966.

2. Mr. Murari Lal Gupta had executed a will dated 30th November, 1984. The will is not disputed by any of the parties including the appellant. What is subject matter of consideration in this appeal and as adjudicated by the impugned order dated 23rd March, 2006 passed by the learned Single Judge, are paragraphs 3 and 8 of the aforesaid will, which for the sake of convenience are reproduced below:-

> "**3.** That at present I am absolute legal owner of immovable property consisting of a residential house No. C-11, Green Park Ext. New Delhi.16 which was got constructed by me on a plot of land purchased by me out of my own income and sources. I further declare that half of the cost of the plot in this land was paid to me by my deceased younger brother Sh. Girdhari Lal Gupta. The construction of the building on the ground floor and the 1st floor and the barasati thereon was got done by me out of my own income and sources. However, the half of the cost of construction was paid to me by my deceased younger brother.
>
> **8.** I have also cash deposited in my saving a/c in the State Bank of India, Green Park, new Delhi and I declare that all my four sons share the amount equally.
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> I have read the contents of my above will and found the same to be correct and as dictated by me. It is further stated that any controversies which may arise later on may be settled by the affected beneficiaries of this Will by discussion among themselves & on

> the principle of a decision by simple majority."

3. Learned Single Judge has held that the ground floor of the property No. C-11, Green Park Extension, New Delhi-110016 stands bequeathed to four sons of late Mr. Murari Lal Gupta viz. Mr. Radha Krishan Gupta, Mr. Bal Krishan Gupta, Mr. Ram Krishan Gupta & Mr. Bhagwan Krishan Gupta. The first floor of the aforesaid property as per the will belongs to and is owned by the legal representatives of late Mr. Girdhari Lal Gupta. To this extent also, there is no dispute between the appellant and the other respondents, though the learned counsel for the appellant had submitted that paragraph 3 of the will does not make a bequest of the first floor in favour of legal representatives of late Mr. Girdhari Lal Gupta but acknowledges their right. It is, however, submitted that by a will, an immoveable property could not have been transferred by Mr. Murari Lal Gupta in favour of the legal representatives of late Mr. Girdhari Lal Gupta and, therefore, the children of late Mr. Girdhari Lal Gupta cannot claim any right in the property. It is further stated that as a gesture of goodwill, the appellant is not claiming any right on the first floor of the property against the children of late Mr. Girdhari Lal Gupta but the said respondents cannot claim any right, title or interest on the second /barsati floor. In alternative, it is submitted that what has been granted or bequeathed to children of late Mr. Girdhari Lal

Gupta is only the first floor and not any other portion of the aforesaid property. The property was registered in the name of Mr. Murari Lal Gupta and as per the provisions of Transfer of Property Act read with the will, the entire property except the first floor stands bequeathed to the four sons of late Mr. Murari Lal Gupta to the exclusion of every one.

4. The respondents herein including the three brothers of the appellant (other three sons of late Mr. Murari Lal Gupta) have opposed the present appeal. They have drawn our attention to the will and it is submitted that the intention of the testator was to admit that both he and his brother late Mr. Girdhari Lal Gupta were equal owners of the property and as per the terms of oral family settlement, ground floor had fallen in share of Mr. Murari Lal Gupta and the first floor had fallen in share of late Mr. Girdhari Lal Gupta. Accordingly, the learned Single Judge had rightly interpreted the will and held that the barsati floor should be equally divided between the two families i.e. the four brothers of late Mr. Murari Lal Gupta and the children of late Mr. Girdhari Lal Gupta.

5. We have considered the contentions raised. It may be relevant to state here that the suit for partition was filed in the year 1998 by Mr. Ram Krishan Gupta son of late Mr. Murari Lal Gupta, one of the respondents herein. He is opposing the appeal. As per averments

made in paragraph 3 of the plaint, the said plaintiff who is now represented by his legal heirs viz. the respondent Nos. 1 to 3, late Mr. Murari Lal Gupta had bequeathed first floor of the property to the family members of his own brother late Mr. Girdhari Lal Gupta, while rest of the property was bequeathed to the four sons of late Mr. Murari Lal Gupta. The appellant who was defendant No. 3 before the learned Single Judge in his written statement had admitted execution of the will dated 30th November, 1984 by late Mr. Murari Lal Gupta and has also stated that the said will makes a bequest of the first floor of the aforesaid property in favour of family members of late Mr. Girdhari Lal Gupta. Thus, the stand taken by the learned counsel for the appellant that the will dated 30th November, 1984 does not make any bequest in favour of family members of late Mr. Girdhari Lal Gupta is contrary to the pleadings and the averments made in his written statement. We need not dwell further on this aspect in view of the reasons given below.

6. A will is interpreted by applying "Arm Chair Rule". The said principle has been succinctly explained by a Learned Single Judge of this Court in the case of ***Shri Kuldip Mehta v. Shri Jagdip Mehta*** **CS(OS) No.1963/1997** in the following words:-

> "Although a will speaks from the death of the testator, in construing the will the court should determine the facts and circumstances respecting the testator's property and family

> and things as at the date of the will in order to put itself in the chair of the testator so that effect to the words in the will and meaning to be assigned to them could be ascertained without taking into note the evidence or circumstances which came into existence after the will was written."

7. We refer here to ***Meggary and Wade "The Law of Real Property"*** Sixth edition paragraph 11-65 page 613.

> "Evidence of facts and circumstance existing when the will was made is always admissible in order to explain its terms. "you may place yourself, so to speak in (the testator's) armchair"thus, extrinsic evidence is admissible to show that certain words had a peculiar meaning to the testator .... in which case the true intention is carried; *falsademonstratio non nocet (a mistake in description does no harm)."*

8. It would be permissible to supply words to give effect to the intention of the testator. Though, this should be resorted to as a rule of last instance, as held in ***Pramod Kumari Bhatia v. Om Prakash Bhatia*** reported in AIR 1980 SC 446 the Supreme Court justified exercise of curial draftsmanship and supply the specific words missing from the will. In ***Jarman on Wills*** (8th edition, page 592) it has been observed:-

> "Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the words he used and it is also clear what are the words which he omitted, those words may be supplied in order to effectuate the intention, as collected from the context."

9. Let us apply the Arm Chair Rule to para 3 of the will. Late Mr. Murari Lal Gupta was the elder brother of Mr. Girdhari Lal Gupta. Mr. Murari Lal Gupta has admitted that late Mr. Girdhari Lal Gupta had paid to him half of the price of the plot and had also paid to him half of the total cost of construction made on the property, though the said plot was registered in the name of Late Shri. Murari Lal Gupta. Paragraph 3 of the will is an admission by late Mr. Murari Lal Gupta that his brother late Mr. Girdhari Lal Gupta and subsequently his children have equal share in the plot as well as the building. Both of them were joint owners of the plot and it was mutually decided between Mr. Murari Lal Gupta that he owns the ground floor and the family members of Mr. Girdhari Lal Gupta own the first floor. The intention of the testator and the admission made by him in the will dated 30th November, 1984 is apparent. In plain and simple language, late Mr. Murari Lal Gupta has categorically stated that the family members of late Mr. Girdhari Lal Gupta have equal share in the plot and the building constructed on the plot. Thus, both the branches have equal share in the property.

10. As per the stand taken by the appellant, in terms of the oral settlement, ground floor belongs to Mr. Murari Lal Gupta and after his death shall devolve on his four sons, whereas the first floor shall devolve on the family members of late Mr. Girdhari Lal Gupta.

Normally, this would mean that the ground floor and below shall belong to and will be owned by the four sons of late Mr. Murari Lal Gupta and the first floor and anything above the first floor, will be owned by family members of late Mr. Girdhari Lal Gupta, as per judgment in ***Shri Kuldip Mehta versus Shri Jagdip Mehta*** (Supra). However, we are not inclined to make any observation and examine this aspect, as the same is not the subject matter of this appeal. The respondents who are owners of first floor have not laid exclusive claim on the terrace/barsati, on the contrary the claim of exclusive ownership of the said floor is by one of the owners of the ground floor. It is the case of the respondents that they are 50% owners of the barsati floor.

11. In the present case it is stated by the counsel for the respondents that the roof on the first floor should be equally divided amongst the four sons of late Mr. Murari Lal Gupta on one side and the family members of late Mr. Girdhari Lal Gupta on the other side. The family members of late Mr. Girdhari Lal Gupta are not making any claim in respect of the barsati floor to the exclusion of the four sons of late Mr. Murari Lal Gupta.

12. We do not find any merit in the contention of the appellant that late Mr. Murari Lal Gupta could not have referred to and admitted oral family settlement between him and his late brother Mr. Girdhari Lal Gupta in the will. A family settlement can be oral and need not be in writing. An oral family settlement is binding on the parties and need

not be registered. Law in this regard is well established and accepted. In this connection, we may refer to the judgment of the Supreme Court in ***Kale and Others versus Deputy Director of Consolidation and Others***, reported in AIR 1976 Supreme Court 807, wherein it has been held that a family arrangement can be oral in which case no registration is required. Similarly, a memorandum recording terms of family settlement which does not create or extinguish any right in an immovable property, is not compulsorily registrable. However, a family settlement recording terms and recitals of a family arrangement in praesenti and which is not merely a memorandum, is required to be registered and stamped. In this case it was further held that in case of a family settlement, an antecedent title, claim or interest in the property can be assumed and Courts normally strive to uphold family arrangements by taking broadest view possible as this avoids litigation and prevents destruction of family ties and unity. Family arrangements are governed by special equities and should be enforced when honestly made to ensure that unity and solidarity of the family is protected and to achieve equal distribution of wealth instead of concentration of wealth in the hands of some family members. We may quote some paragraphs from the said judgment.

> **"9.** Before dealing with the respective contentions put forward by the parties, we would

like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise *Kerr on Fraud* at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

"The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain .and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a

milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In *Halsbury's Laws of England,* Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

> "A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.
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> The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.
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> 6. Family arrangements are governed by principles which are not applicable to dealings between strangers. The court,

> when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

13. The above view has been reiterated in ***Roshan Singh and Others versus Zile Singh and Others***, reported in AIR 1988 Supreme Court 881 and ***Bakhtawar Singh versus Gurdev Singh and Another***, reported in (1996) 9 SCC 370.

14. It may be relevant to state here that Mr. Murari Lal Gupta died in the year 1986 and the suit for partition was filed in the year 1998. It is admitted case of both the parties that the barsati floor has always been in occupation of late Mr. Girdhari Lal Gupta and his family all along. It is only in the year 1998, when the present suit for partition was filed by the predecessor interest of the respondents 1, 2 and 3 in the present appeal. A separate suit for mesne profits based on half share of the barsati floor is also filed against the family members of late Mr. Girdhari Lal Gupta. It is, therefore, clear that even during the life time of Mr. Murari Lal Gupta and after his death, all along parties have always accepted that family members of late

Mr. Girdhari Lal Gupta have an equal share on the barsati/second floor of the property. The oral family arrangement has been acted upon.

15. Initially in 1998 when the suit was filed, three sons of late Mr. Murari Lal Gupta had claimed absolute right on the second floor on the ground that only first floor stands bequeathed to the family members of late Mr. Girdhari Lal Gupta but they have now changed their stand and have accepted the position that family members of late Mr. Girdhari Lal Gupta have equal share on the second/barsati floor. It is only the appellant herein who is claiming that he along with his three brothers are absolute owners of the barsati/second floor to the exclusion of family members of late Mr. Girdhari Lal Gupta.

16. With reference to Clause 8 of the will dated 30th November, 1984 it was submitted by the learned counsel for the appellant that as no bequest was made in favour of family members of late Mr. Girdhari Lal Gupta, and therefore the aforesaid clause is not applicable. Even if the above contention is presumed and accepted, to our minds, it will not make any difference, for the three brothers of the appellant are not supporting the appellant. Further to our minds, the testator by incorporating the Clause 8 in the will, wanted to avoid any litigation and disputes amongst the family members and,

therefore, had advised his children to resolve and decide all disputes sitting across a table and, if required, on the principle of simple majority. Even if we exclude the family members of late Mr. Girdhari Lal Gupta, all beneficiaries under the will except the appellant have admitted equal right of the family members of late Mr. Girdhari Lal Gupta in the barsati/second floor.

17. In view of the above, we do not find any merit in the present appeal and the same is dismissed with costs, which are assessed at Rs.5,000/-.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

DECEMBER 20, 2007.
VKR/P